IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

C.M.A.No.930 of 2009

Commissioner of Central Excise,
Chennai-I Commissionerate,
26/1 (Old No.121), M.G.Road,
Chennai 600 034. .. Appellant

Versus

M/s.Garg Steels & Alloys Pvt. Ltd.,
No.34, G.N.T. Road,
Madhavaram,
Chennai 600 110. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final order No. 1029/08 dated 19.09.2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai-6.

For Appellant .. Mr. A.P.Srinivas
Central Govt.Standing counsel

For Respondent .. Not ready notice

JUDGMENT

The Civil Miscellaneous Appeal filed by the Central Excise Department calling in question the correctness of the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai-6 dated 19.9.2008 in Final order No. 1029/08, has been admitted on 16.4.2009 for consideration of the following substantial questions of law;

"(i) Whether on facts and circumstances of the case, the Appellate Tribunal is right in granting relief of MODVAT Credit to the assessee for the assessment year 1997-98 for having filed the Revised Return of Income, without considering the contravention of Rule 57 R and 57 T of the erstwhile Central

Excise Rules, 1944? and

(ii) Whether on the facts and circumstances of the case the Appellate Tribunal is right in deleting the levy of penalty under section 11 AC of the Central Excise Act, 1944 which is a mandatory in nature and there is no scope for any discretion to waive or delete the same?"

2. Circular instruction issued by the Central Board of Excise and Customs, New Delhi in F.No.390/Misc./163/2010 J.C., dated 17.12.2015 stipulates that appeals shall not be filed pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.15 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is, hence, dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case. No costs. Consequently, the connected M.P.No.1 of 2009 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Customs, Excise and Service Tax
Appellate Tribunal (CESTAT),
South Zonal Bench, Chennai-6.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.6337

C.M.A.No.930 of 2009

RJ(CO)
GN(28/03/2017)